

**STATEMENT OF OVERRIDING CONSIDERATIONS [DRAFT]**

**I. Legal Background and Project Impacts**

**A. Legal background**

The California Environmental Quality Act ("CEQA") requires a public agency to balance the benefits of a proposed project against its significant, unavoidable adverse environmental impacts in determining whether to approve the project.

Section 15093 of the State CEQA Guidelines provides the following:

*(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."*

*(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the Final Environmental Impact Report (Final EIR) but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the Final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.*

*(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.*

**B. Project significant impacts**

The Santa Maria Refinery Rail Spur Extension Project (Project) will result in environmental effects that, although mitigated to the maximum extent feasible by the implementation of mitigation measures required for the Project, will remain significant and unavoidable, as discussed in the Final Environmental Impact Report (EIR) and CEQA Findings. The significant, unavoidable environmental effects of the Project are associated with mainline rail transportation of crude oil. These impacts are summarized in the CEQA Findings and constitute the impacts for which this Statement of Overriding Considerations is made. There are no significant, unavoidable adverse environmental impacts from project construction or operations on the refinery site, or from truck and passenger vehicle transportation associated with the Project.

## **II. Overriding Considerations**

The Planning Commission finds and determines in approving the Project that the Final EIR has disclosed the significant effects of the Project, and identified means of avoiding or lessening those significant effects. The Planning Commission recognizes that, notwithstanding the incorporation of mitigation, significant and unavoidable impacts will result from implementation of the Project. However, the Project also offers numerous benefits. Having (1) adopted all feasible mitigation measures and environmental controls, (2) recognized all significant, unavoidable impacts, and (3) balanced the benefits of the Project against the Project's significant and unavoidable impacts, the Planning Commission finds that specific overriding economic, legal, social, technological, or other benefits of the Project outweigh the significant, unavoidable impacts associated with mainline transportation of crude oil and provide sufficient reasons for approving the Project.

The following benefits and considerations outweigh the significant and unavoidable adverse environmental impacts, and such benefits override, outweigh, and make "acceptable" any remaining environmental impacts of the project (CEQA Guidelines Section 15092(b)). All of these benefits and considerations are based on the facts set forth in the Findings, the Final EIR, and the record of proceedings for the Project. Each of these benefits and considerations is a separate and independent basis that justifies approval of the Project, so that if a court were to set aside the determination that any particular benefit or consideration will occur and justifies Project approval, this Planning Commission determines that it would stand by its determination that the remaining benefit(s) or consideration(s) is or are sufficient to warrant Project approval.

### **A. Economic Benefits**

#### **1. The existing refinery benefits the local and regional economy.**

The Project consists of a modification of the existing Santa Maria Refinery. Accordingly, to understand the benefits of the Project, it is first necessary to identify the benefits of the existing refinery. The existing refinery is an important contributor to the economy of San Luis Obispo County, through direct employment, indirect and multiplier employment, local purchases and taxes, and other contributions. The project will enhance and sustain the refinery's ability to contribute in this manner.

The refinery currently employs approximately 200 workers. This number includes approximately 130 permanent, full-time workers directly employed by Phillips 66, and approximately 70 regular employees of Phillips 66's contractors. For 2013, the estimated local payroll associated with direct employment at the refinery totaled \$44,299,000, consisting of approximately \$17,879,000 paid to Phillips 66 employees (including benefits) and a contractor payroll of approximately \$26,420,000. These employees live in the region and a substantial portion of the direct employment payroll is spent in the region as well.

In addition to direct employment, the existing refinery contributes to the local and regional economy through indirect employment. In an economic impact analysis conducted under contract to the Western States Petroleum Association, Purvin & Gertz Inc. evaluated the indirect effects of refinery employment using multipliers that are provided by the U.S. Census Bureau, categorized by NAICS code and region. For California, Purvin and Gertz found that the multiplier for employment at a refinery is 9.0343 and the multiplier for earnings is 3.4558. These multipliers are applied to the direct impacts provided by a given industry to estimate the total economic impact to the region. Thus, Purvin and Gertz found that each direct job in a California petroleum refinery actually results in nine jobs within the region: the direct employment from the refinery job, plus eight additional jobs in the surrounding community. (Purvin & Gertz Inc., *Assessment of Petroleum Industry Economic Impact to the State of California*, 2011.) Applying this benchmark to the Santa Maria Refinery, approximately 1,660 additional jobs in the community are supported by the refinery's continued operation, and approximately \$108,789,000 of indirect earnings in the region are realized from the refinery's continued operation.

The existing refinery also results in substantial and ongoing tax payments to state and local governments. For example, in 2013, Phillips 66 paid approximately \$2,236,000 per year in state and local taxes associated with the operation of the Santa Maria Refinery. Below is a summary to the taxes paid in 2013 related to the existing refinery:

- Property tax: \$1,555,000
- Local sales tax: \$80,000
- Sales tax paid to state of California: \$518,000
- Miscellaneous \$83,000

The 2013 contributions above are representative of the Santa Maria Refinery taxes paid by Phillips 66 on an annual basis.

The refinery also supports the local and regional economy through its purchasing demands. In 2013 alone, \$29,712,000 worth of goods and services were purchased from vendors. These vendors are generally located within the state of California (including many within the region). By supporting these vendors, the refinery is increasing the economic vitality of the region and the state, which ultimately benefits the County.

The refinery and its employees also support important community and charitable services. The company also encourages its employees to be involved and supportive of community activities and to make charitable donations, some of which are matched by the company.

## **2. The Project will provide additional benefits to the County's economy.**

The Project will benefit the local and regional economy in several ways: direct expenditures for project construction; increased employment opportunities; added tax revenue; increased stability and certainty of continued operation of the existing refinery.

a. Direct Expenditures for Project Construction.

The project involves a capital investment of approximately \$40,000,000 – \$60,000,000 dollars in the refinery in equipment and materials. This includes direct purchases of equipment and materials, and payments to construction contractors that cover equipment, materials, and other costs. This estimate does not include construction labor payroll.

b. Increased Employment

At its peak, construction of the project will create up to 200 prevailing wage jobs for construction workers. Given current employment patterns in the County, it is expected that a large majority (up to 90%) of the construction workers will come from the local work force. Accordingly, it is likely that a large portion of the construction payroll will be spent in the local economy.

Project operations will create 8 to 12 new permanent, full-time jobs. These new jobs would increase the payroll beyond the current level of approximately \$44,299,000, with a corresponding increase in employee expenditures in the local economy. Applying the indirect employment multiplier factor developed by Purvin and Gertz, the 8 to 12 new, permanent jobs will result in an additional 64 to 96 jobs in the region.

c. Added Tax Revenue

Following completion of construction, the County will reassess the value of the refinery for property tax purposes. Following reassessment, it is expected that the refinery's annual property taxes will increase by approximately \$400,000 to \$600,000. Other state and local taxes likewise will increase. The additional construction and permanent employees are expected to live in the region, and so a portion of the additional payroll will be spent in the region, generating property taxes and sales taxes. The Project will also create additional economic opportunities for local vendors that will add significant sales and other tax revenue. A portion of the property, sales and other taxes paid directly by the refinery, as well as by employees and local businesses and vendors related to business generated by the refinery, will fund schools and other valuable community services.

d. The Project provides greater economic stability and certainty for future refinery operations.

Currently, Phillips 66 faces three challenges with respect to crude supply for the refinery. First, local crude oil production is declining. Second, the company does not itself produce crude oil for the refinery. Third, more recently, the pipeline through the refinery received crude oil produced offshore in or adjacent to Santa Barbara County was shut down, and the pipeline operator has not established a date for a return to operation. Loss of this pipeline severed the refinery from crude oil produced offshore in or adjacent to Santa Barbara County, exacerbating the crude supply challenges. The Project enhances the competitiveness and vitality of the refinery by increasing the refinery's access to crude markets across North America that are available by rail. By enhancing the refinery's

competitiveness, the Project sustains the significant economic benefits that the refinery contributes to the local economy.

When the refinery was built, it was owned by Union Oil Company of California. Most of the local crude production also was owned by Union Oil, so a single pipeline system was sufficient to deliver all of the crude oil needed to feed the refinery. However, Phillips 66 (the current refinery owner) does not produce crude oil and must purchase crude oil for the refinery from others. This change in relationship between the refinery and the sources of crude oil limits Phillips 66's ability to source competitively-priced crude oil. (EIR at 2-37 to 2-38.)

In addition, local production is declining. Where there are limited – and declining – sources of local crude, as there are here, the ability of the refinery to receive more distant crude by a variety of modes of transportation is an important factor in being able to negotiate long-term contracts at competitive prices.

Refiners typically prefer to negotiate long-term supply contracts for at least a portion of their crude oil supply. The resulting stability allows the refinery's engineers and operations personnel to better optimize the operation of the refinery. A relatively isolated refinery such as the Santa Maria Refinery faces challenges in establishing long-term contracts for crude oil at competitive prices, which can cause swings in refining margins. These swings in the refinery's profitability can affect employment, local purchases, taxes paid, charitable contributions and other direct and indirect payments and contributions to the County and the community. The County will benefit by greater stability in refinery operations. The Project will improve the future prospects for stability at the refinery by enabling it to access competitively-priced crude oil produced across North America that is available by rail.

In this respect, the project will also further the Goals and Policies of the San Luis Obispo County General Plan (General Plan). Appendix G of the Revised Draft EIR summarizes the Project's consistency with a wide range of goals, objectives and policies in the General Plan and its elements. Beyond consistency, the Project also is beneficial to the County because it furthers the goals and objectives of the Economic Element of the General Plan. The Economic Element states that economic vitality is as important as environmental and social factors in contributing to the County's quality of life. Goal EE 1 is to promote a strong and viable economy by pursuing policies that balance economic, environmental and social needs of the County. Goal EE 2 is to retain and enhance a diverse economy. The Project will further these goals through constructing additional infrastructure and facilities that will enhance the vitality of an existing business in the County, within the confines of the existing industrial site.

## **B. Environmental benefits**

The significant, unavoidable environmental effects of the Project are associated with mainline rail transportation of crude oil. There are no significant, unavoidable adverse environmental impacts from project construction or operations on the refinery site, or from truck and passenger vehicle transportation associated with the Project. In the immediate

vicinity of the refinery, the Final EIR concluded that the Project would result in two environmental benefits.

**1. The Project will increase the quantity and improve the quality of native habitat on the Phillips 66 site.**

The construction of facilities at the refinery will impact approximately 20.88 acres of grazed land supporting a plant community considered sensitive by the California Department of Fish and Wildlife (CDFW). (EIR at 4.4-31.) However, with the implementation of mitigation measure BIO-5a, Phillips 66 will be required to compensate for the loss of habitat by creating new native habitat through on-site restoration at an acreage ratio of 2:1 (restored:impacted). The existing habitat that will be affected by the Project is highly disturbed from decades of cattle grazing and is largely dominated by non-native invasive species such as veldt grass. The performance standards that the new habitat must meet will ensure that the new habitat is of higher quality than the habitat lost due to the Project. Thus, the Project will ultimately result in the site supporting twice as much native habitat as will be lost, and the new habitat will be of higher quality than the habitat lost.

The impacts to approximately 20.88 acres of disturbed and degraded land which, in theory, could support healthy central dune scrub under certain future circumstances (e.g., if cattle grazing were eliminated and/or if the site was actively restored), will be offset through the creation of 41.76 acres of high quality central dune scrub habitat that will support not only the central dune scrub, but also other known rare plant species known to occur on the Phillips 66 property and in the region. Mitigation Measure BIO-5a requires the applicant to prepare a Dune Habitat Restoration Plan (DHRP) for review and approval by the County in consultation with CDFW and the United States Fish and Wildlife Service. The DHRP shall focus on restoring and enhancing sensitive plant associations, and supporting sensitive plant species by removing invasive species (iceplant, veldt grass, and other invasive species) and planting appropriate native species, including but not limited to: mock heather, purple nightshade, Blochman's ragwort, Blochman's leafy daisy, California spineflower, sand almond and suffrutescent wallflower. The restoration area(s) will be located within the Phillips 66 property boundary and protected from grazing activity and protected in perpetuity by easement.

As discussed in the EIR, no impacts to the endangered Nipomo Mesa lupine are expected to occur as the species is not known to occur in the project construction area. The applicant is required by BIO-1 to conduct a survey for the presence or absence of this plant at the appropriate season prior to construction, and mitigation is included in the unlikely event that the species is discovered in the work area at any point prior to or during construction of the project.

The Planning Commission has confidence that the restoration goals identified by BIO-5a will be achieved in light of the applicant's track record of conducting successful restoration elsewhere on its property. Restored portion of Phillips 66's property to the west of the Union Pacific Railroad tracks (EIR at 4.4-31) is now considered a mapped Environmentally

Sensitive Habitat Area containing high quality habitat and supporting numerous special-status species.

## **2. The Project provides air quality benefits.**

The Project will provide marked air quality benefits to the surrounding community compared to existing (baseline) conditions. Specifically, the Project will result in reduced localized health risks within the community.

Currently, trucks transport solid petroleum coke and recovered sulfur away from the refinery. (EIR at 2-5.) Upon exiting the refinery, these trucks travel east along Willow Road to Highway 101. Diesel truck exhaust includes diesel particulate matter, which is considered a toxic air contaminant. The San Luis Obispo County Air Pollution Control District's (SLOAPCD) health risk threshold for toxic air contaminants is 10 in one million. The potential carcinogenic impacts associated with the refinery's existing stationary source emissions together with the existing refinery-related vehicular emissions along Willow Road were modeled, and the results included in the Final EIR. The modeling estimated that the cancer risk associated with the existing refinery and associated traffic would exceed the SLOAPCD's health risk threshold at the nearest sensitive receptor, and this risk results primarily from trucks entering and leaving the refinery. (Final EIR at 4.3-23.) For the existing refinery and associated traffic, carcinogenic impacts exceed 10 in one million in a corridor that extends for more than two miles from the refinery along and on either side of Willow Road. (See Final EIR, Figure 4.3-4 and pages 4.3-23 to 4.3-24.)

The Project will reduce the health impacts of the existing refinery on the nearby community. It will achieve this through the implementation of Mitigation Measure AQ-4b, which requires the trucks used to move coke and sulfur to meet NOx and PM emission standards established by EPA for 2010 model year trucks; a higher standard than is currently required for the trucks. The measure also requires that, to the extent feasible, transportation of coke shall be accomplished by rail rather than truck. In addition, Mitigation Measure AQ-4c limits the time of day during which crude oil train unloading and switching activities may occur (unless Tier 4 engines are used), to reduce emissions during periods of calm meteorological conditions. The result is that under the Project, the most serious health risks – those that exceed the 10 in one million threshold – no longer impact the community neighboring the refinery. With the Project, the area of carcinogenic risk exceeding 10 in one million is largely confined to the refinery property itself, and away from sensitive receptors. Compare Figure 4.3-4 (Final EIR p. 4.3-24) to Figure 5-7 (Final EIR p. 5-57).

This improvement to local air quality due to the Project will have real and long-lasting positive impacts on the community. The County has no means to achieve this improvement if there is no discretionary project approval to which the County can add enforceable conditions.

**C. The Environmental Effects of the Project Are Preferred To The Future Environmental Effects Expected If The Project Is Not Approved.**

The Planning Commission also has considered the adverse impacts of the project as compared with the most likely future crude delivery scenario if the project is not approved. While it requires weighing of trade-offs and the exercise of judgement to compare the different risks and impacts presented by different crude delivery modes, the Planning Commission has determined that the environmental impacts of future crude delivery to the refinery will be less if the Project is implemented than if it is disapproved. The significant, unavoidable impacts associated with the Project result from transportation of crude oil by rail. Disapproval of the Project would not avoid the impacts of mainline rail transportation, but simply divert some of them outside of San Luis Obispo County to other locations within California. In addition, within the County, there would be an increase in truck trips transporting crude oil, with related environmental impacts. No discretionary approval would be required from the County under this scenario, and so the County would not have authority or opportunity to impose and enforce conditions of approval in order to mitigate the environmental effects of the increased trucking.

Recently, 2-7% of the refinery's crude oil has been transported from Canada to California by train to a crude unloading facility near Bakersfield, California where it is transferred onto trucks. The trucks travel approximately 110 miles one-way (220 round trip miles) via State Highways 166 and 101 to the Santa Maria Pump Station for delivery into the dedicated pipeline that carries crude oil the last leg to the refinery. Crude deliveries via this route can increase substantially. Crude oil shipments via truck to the Santa Maria Pump Station have averaged about 6,800 barrels per day, but this could increase to 26,000 barrels per day, which is the volume currently allowed by the pump station permit issued by the Santa Barbara County Air Pollution Control District. An increase of 19,200 barrels per day could add about 100 truck trips per day of crude travelling between rail offloading facilities in the San Joaquin Valley and the Santa Maria Pump Station. (EIR at 5-4.) This transportation mode is not restricted to crude from Canada, and could be used to deliver crude oil originating from other parts of North America that are connected to the national rail network.

The significant, unavoidable environmental impacts associated with mainline rail operations and rail transportation of crude oil would occur regardless whether the Project is approved or disapproved. The rail route would follow the same path from the point of origin of the crude to the main rail yards in Roseville and Colton, California, resulting in nearly identical impacts for this portion of the transportation route, including air emissions, GHG emissions, and risk of accident and release that could affect human health or agricultural, biological, cultural or water resources. Under the no-project-approval scenario, from the Roseville or Colton rail yards, the trains would travel through the Central Valley rather than along coastal routes, but the mileage (and thus emissions, risk and other impacts) would be only slightly less. Given the 26,000 barrels per day limit on throughput at the Santa Maria Pump Station, under this scenario there would be only an average of 2.5 unit trains per week delivering crude oil, rather than three unit trains per week under the proposed project. This would translate into a small reduction in mainline rail-related



impacts if the project is denied, although a portion of the impacts would occur at a different location. Also, the risk of rail accident and release affecting agricultural resources would be greater if the project is disapproved and the route to the San Joaquin Valley unloading facility is used.

In addition, the no-project-approval scenario would rely on increased use of trucks to move the crude oil from the Bakersfield area to the Santa Maria Pump Station, introducing a new source of impacts that are not present in the proposed Project. Trucks have a higher likelihood of accident and release per mile than trains. Thus, it is more likely that there would be transportation accidents and releases of crude oil within San Luis Obispo County if the Project is disapproved, although the volume of any single crude oil spill would likely be less. With the addition of vapors emitted during truck loading and unloading, as well as the tailpipe emissions from 100 truck trips per day between Bakersfield and Santa Maria, the peak daily air emissions would be greater if the Project is disapproved.

Additionally, under the Project, the County has the ability to require feasible measures to mitigate Project impacts. As discussed in Section B.2, above, Mitigation Measure AQ-4b will result in a reduction of health risk related to toxic air contaminants from existing refinery-related activities in the event the Project is approved. This benefit will not occur if the Project is disapproved, and instead the existing air quality impacts near the refinery from refinery-related truck traffic will continue. Similarly and even more importantly, the County would have no authority to impose and enforce conditions regarding the type of trucks used to transport crude oil between the Bakersfield area and the Santa Maria Pump Station. If the Project is disapproved, the additional 100 trucks trips per day would emit increased amounts of diesel particulate emissions while traveling between Bakersfield and the Santa Maria Pump Station, and this increase in truck traffic could result in a significant and unavoidable health impact to sensitive receptors in close proximity to the truck route. Unlike with the approval of the Project, the County would not be able to require that trucks meet EPA model year 2010 standards for NOx and PM emissions.

Similarly, the benefits of Mitigation Measure BIO 5a would not occur if the Project is disapproved.

The Planning Commission has carefully considered impacts when evaluating the Project against the likely future crude delivery scenario if the Project is disapproved. The mainline rail impacts would be very similar, although a portion of the route (and associated impacts) would shift locations from the coastal route and San Luis Obispo County (under the Project) to the Central Valley and rail unloading facilities near Bakersfield (if the Project is disapproved). These are analyzed at length in the EIR (p. at 5-39 through 5-46) and summarized in Table 5.11 of the EIR.<sup>1</sup> In addition, Project disapproval would likely result

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<sup>1</sup> In fact, Table 5.11 actually overstates project impacts from mainline rail relative to the no project alternative because at the time the table was created, the proposed project anticipated 5 trains per week (250 per year), rather than the project we are now considering, which anticipates 3 trains per week (150 per year). Nonetheless, even when comparing the

in an increase in trucks transporting crude oil to and within San Luis Obispo County, with associated impacts.

On balance, the County finds that the Project's distinct benefits of avoiding the impacts of increased truck transportation of crude oil within the County, when considered in light of the roughly equivalent mainline rail impacts, are preferable to the likely crude transportation impacts in the future if the Project is disapproved.

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larger projects impacts with the no project alternative, the impacts from mainline rail are similar.